may allow for good cause shown, the importer or consignee shall take any action necessary to insure delivery to the district director of the notification described in this paragraph. If the notification described in this paragraph is not delivered to the district director of customs for the port of entry of such electronic products within 90 days of the date of entry or such additional period as may be allowed by the district director, for good cause shown, the importer or consignee shall deliver or cause to be delivered to the district director of customs those electronic products which were released in accordance with this paragraph. In the event that any such electronic products are not redelivered within 5 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of a bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence if the merchandise had been released under a bond given on Form 7551.

(e) *Merchandise refused entry.* If electronic products are denied entry under any provision of this section, the district director of customs shall refuse to release the merchandise for entry into the United States.

(f) *Disposition of merchandise refused entry into the United States; redelivered merchandise.* Electronic products which are denied entry under paragraph (b) of this section or which are redelivered in accordance with paragraph (d) of this section and which are not exported under customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under customs laws and regulations; *Provided, however,* That any such disposition shall not result in an introduction into the United States of an electronic product in violation of the Act. (Sec. 358, 82 Stat. 1177, sec. 360, 82 Stat. 1181; 42 U.S.C. 263f, 263h.)

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

The regulations set forth herein will conform customs procedures to regulations issued by the Secretary of Health, Education, and Welfare for the administration and enforcement of the Radiation Control for Health and Safety Act of 1968 in 42 CFR, Part 78, Subpart G, which will be effective upon publication in the FEDERAL REGISTER. It is found therefore that notice and public procedure under 5 U.S.C. 553 in the promulgation of these regulations is impracticable and good cause is found for making them effective upon the date of publication in the FEDERAL REGISTER.

[SEAL] MYLES J. AMBROSE,
Commissioner of Customs.

Approved: January 12, 1970.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[F.R. Doc. 70-853; Filed, Jan. 21, 1970; 8:50 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 27—CANNED FRUITS AND FRUIT JUICES

Canned Grapefruit; Confirmation of Effective Date of Order Establishing Standards of Identity, Quality, and Fill of Container

In the matter of establishing definitions and standards of identity, quality, and fill of container for canned grapefruit:

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the order in the above-identified matter published in the FEDERAL REGISTER of November 22, 1969 (34 F.R. 18598). Accordingly, the standards established thereby (21 CFR 27.90, 27.91, and 27.92) will become effective March 22, 1970.

Dated: January 14, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-819; Filed, Jan. 21, 1970; 8:46 a.m.]

PART 53—TOMATO PRODUCTS

Tomato Puree and Tomato Paste, Identity Standards; Confirmation of Effective Date of Order Re Measurement of Tomato Soluble Solids

In the matter of amending the standards of identity for tomato puree (§ 53.20) and tomato paste (§/53.30) to provide for measurement of tomato soluble solids by refractometer instead of determining salt-free tomato solids by the vacuum oven drying method:

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sécs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the order in the above-identified matter published in the FEDERAL REGISTER of November 19, 1969 (34 F.R. 18420). Accordingly, the amendments promulgated thereby will become effective January 18, 1970.

Dated: January 14, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-820; Filed, Jan. 21, 1970; 8:47 a.m.]

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

BHC; Lindane

No comments and no requests for referral to an advisory committee were received in response to the notice published in the FEDERAL REGISTER of November 6, 1969 (34 F.R. 17962), in which the Commissioner of Food and Drugs proposed for reasons given that the tolerances for the insecticides BHC (§ 120.140) and lindane (§ 120.133) be revised. The Commissioner concludes that the proposal should be adopted.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (e), (m), 68 Stat. 514, 517; 21 U.S.C. 346a (e), (m)) and under authority delegated to the Commissioner (21 CFR 2.120), §§ 120.133 and 120.140 are revised to read as follows:

§ 120.133 Lindane; tolerances for residues.

Tolerances are established for residues of the insecticide lindane (gamma isomer of benzene hexachloride) in or on raw agricultural commodities as follows:

7 parts per million in or on the fat of meat from cattle, goats, horses, and sheep.

4 parts per million in or on the fat of meat from hogs.

3 parts per million in or on cucumbers, lettuce, melons, mushrooms, pumpkins, squash, summer squash, and tomatoes.

1 part per million in or on apples, apricots, asparagus, avocados, broccoli, brussels sprouts, cabbage, cauliflower, celery, cherries, collards, eggplants, grapes, guavas, kale, kohlrabi, mangoes, mustard greens, nectarines, okra, onions (dry bulb only), peaches, pears, peppers, pineapples, plums (fresh prunes), quinces, spinach, strawberries, and Swiss chard.

§ 120.140 BHC; tolerances for residues.

Tolerances are established for residues of the insecticide BHC (benzene hexachloride) in or on the raw agricultural commodities apples, apricots, asparagus, avacodos, broccoli, brussels sprouts, cabbage, cauliflower, celery, cherries, collards, cucumbers, eggplants, grapes, kale, kohlrabi, lettuce, melons, mustard greens, nectarines, okra, onions (dry bulb only), peaches, pears, peppers, plums (fresh prunes), pumpkins, spinach, strawberries, squash, summer squash, Swiss chard, and tomatoes at 1 part per million.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity

the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(e), (m), 68 Stat. 514, 517; 21 U.S.C. 346a (e), (m))

Dated: January 14, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-821; Filed, Jan. 21, 1970; 8:47 a.m.]

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

[Order No. 424-70]

PART 21—WITNESS FEES

Travel Expenses and Subsistence of Federal Officers and Employees Summoned as Witnesses for the Government

By virtue of the authority vested in me by section 1823(a) of title 28 of the United States Code, section 30 of the Act of June 6, 1900, 31 Stat. 332, and section 23(c) of the Alaska Omnibus Act, 73 Stat. 147, § 21.1 of Chapter I of Title 28 of the Code of Federal Regulations is revised to read as follows:

§ 21.1 Officers and employees of the United States summoned as witnesses.

Officers and employees of the United States summoned as witnesses for the Government in cases before U.S. courts (including such courts in the possessions of the United States) or U.S. magistrates shall be entitled (a) to necessary expenses incident to travel by common carrier, or, if travel is made by privately owned automobile, to mileage at the rate of 10 cents a mile, and (b) to a per diem allowance in lieu of subsistence at a rate of $25 within the continental United States (the area of the former 48 States and the District of Columbia), and at the maximum rates prescribed by the President or his delegate pursuant to 5 U.S.C. 5702, outside the continental United States. Such allowances shall be paid in accordance with the provisions of the Standardized Government Travel Regulations.

This order shall become effective on the date of its publication in the FEDERAL REGISTER. Order No. 252-61 of October 27, 1961 is hereby superseded.

Dated: January 12, 1970.

JOHN N. MITCHELL,
Attorney General.

[F.R. Doc. 70-824; Filed, Jan. 21, 1970; 8:47 a.m.]

Title 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

Updating of References

Pursuant to section 4(a) of the Service Contract Act of 1965 (41 U.S.C. 353(a)) Part 4 of Title 29 of the Code of Federal Regulations is hereby amended changing § 4.6 to reflect changes in the addresses of some of the regional offices of the Bureau of Labor Standards and to indicate that the name of the "United States of America Standards Institute" is changed to the "American National Standards Institute, Incorporated."

No notice and public procedure is provided because the changes relate to public contracts and thus are within the exemption provided in 5 U.S.C. 553(a)(2), and further, such notice and procedure is considered unnecessary because the changes are minor involving clerical corrections. The changes shall be effective immediately. No delay in effective date is provided because no substantive changes are involved.

Section 4.6 is amended to read as follows:

§ 4.6 Labor standards clauses for Federal service contracts exceeding $2,500.

* * * * *

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services. Except insofar as a noncompliance can be justified as provided in § 1516.1(c) of this title, this will require compliance with the applicable standards, specifications, and codes developed and published by the U.S. Department of Labor, any other agency of the United States, and any nationally recognized professional organization such as, without limitation, the following:

National Bureau of Standards, U.S. Department of Commerce.
Public Health Service, U.S. Department of Health, Education, and Welfare.
Bureau of Mines, U.S. Department of the Interior.
American National Standards Institute, Inc. (United States of America Standards Institute).
National Fire Protection Association.
American Society of Mechanical Engineers.
American Society for Testing and Materials.
American Conference of Governmental Industrial Hygienists.

Information as to the latest standards, specifications, and codes applicable to the contract is available at the office of the Director of the Bureau of Labor Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, D.C. 20212, or at any of the regional offices of the Bureau of Labor Standards as follows:

1. North Atlantic Region, 341 Ninth Avenue, Room 920, New York, N.Y. 10001 (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, New Jersey, and Puerto Rico).
2. Middle Atlantic Region, Room 410, Penn Square Building, Juniper and Filbert Streets, Philadelphia, Pa. 19107 (Delaware, District of Columbia, Maryland, North Carolina, Pennsylvania, Virginia, and West Virginia).
3. South Atlantic Region, 1371 Peachtree Street NE., Suite 723, Atlanta, Ga. 30309 (Alabama, Florida, Georgia, Mississippi, South Carolina, and Tennessee).
4. Great Lake Region, 848 Federal Office Building, 219 South Dearborn Street, Chicago, Ill. 60604 (Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, and Wisconsin).
5. Mid-Western Region, 1906 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106 (Colorado, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming).
6. Western Gulf Region, 411 North Akard Street, Room 601, Dallas, Tex. 75201 (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas).
7. Pacific Region, 10353 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, Calif. 94102 (Alaska, Arizona, California, Hawaii, Nevada, Oregon, Washington, and Guam).

* * * * *

(Sec. 4(a), 79 Stat. 1035, 41 U.S.C. 353(a))

Signed at Washington, D.C. this 15th day of January, 1970.

GEORGE P. SHULTZ,
Secretary of Labor.

[F.R. Doc. 70-827; Filed, Jan. 21, 1970; 8:47 a.m.]

Chapter V—Wage and Hour Division, Department of Labor

PART 541—DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESMAN"

Executive, Administrative, and Professional Exemptions

On June 27, 1969, there was published in the FEDERAL REGISTER (34 F.R. 9934) a notice of proposed rule making to increase the minimum salary requirements for the exemption of bona fide executive, administrative, and professional employees from the minimum wage and overtime provisions of the Fair Labor Standards Act of 1938. Interested persons were given opportunity to present relevant data, views, and arguments both orally and in writing.

The basic position expressed by most employers was that the present salary levels not be increased. Others proposed that the salary tests be eliminated as a prerequisite to the exemption, while others proposed that differential rates be

set on geographical bases. Those employer groups which represented a substantial number of enterprises newly covered by the 1966 amendments maintained that any increases in the salary tests should be accomplished in several steps over varying periods of time. There was also a recommendation that the percentage of any increase be limited to the percentage increase in the Consumer Price Index since the time of the last adjustment of the salary tests. Many organizations and individuals opposed our proposals on the basis that they would be inflationary.

The employee representatives who testified all agreed that an increase in the salary requirements is in order. However, they felt that the proposed increases were not sufficient. Generally, they suggested a range of $150 to $170 per week for bona fide executive and administrative employees and a range of $175 to $195 per week for bona fide professional employees. They also felt that the salary tests for certain higher paid employees should be between $225 and $260 per week. One union representative recommended an automatic salary review provision geared to the National Survey of Professional, Administrative, Technical, and Clerical Pay which is undertaken annually by the Bureau of Labor Statistics, stating that such a provision would eliminate the lengthy periods which normally occur between revisions of the salary tests, and would keep the salaries current and meaningful.

In regard to the proposal to eliminate the salary tests, the validity of these tests has been fully explored. The arguments that the salary tests are unnecessary are not supported by the Divisions' experience. There has been no indication that the salary tests have resulted in defeating the exemption for any substantial number of individuals who could reasonably be classified for the purposes of the Act as bona fide executive, administrative, or professional employees. The legal validity of the salary tests has been sustained in a number of court decisions.

In regard to the proposal that a multiplicity of salary tests be established to reflect the differentials in wages and salaries paid in various geographical areas of the United States, it should be noted that the salary tests as proposed had already taken geographical variations in salary levels into consideration. I elected, as in the past, to propose salaries which are not geared to high wage areas (such as the Northeast and West) but which take into consideration the lower wage nonmetropolitan areas of the South. For example, of the lowest paid executive employees who were determined to be exempt in establishments investigated by the Divisions between May and October 1968 for all regions in the United States, 20 percent received less than $130 per week, whereas only 12 percent of such executive employees in the West and 14 percent in the Northeast received salaries of less than $130 per week (see Table 13 on page 30 of our Earnings Data Report). It is readily apparent, therefore, that variations in regional salary levels have been considered. In addition, there is no evidence in the record, nor in the Divisions' experience that the uniform salary tests which have been successfully applied for 30 years have adversely affected the application of the section 13(a)(1) exemption. No useful purpose would be served by fragmenting these standards.

The proposal to institute a provision calling for an annual review and adjustment of the salary tests based on the previously referred to Bureau of Labor Statistics' survey appears to have some merit, particularly since past practice has indicated that approximately 7 years elapse between amendment of these salary requirements. I have concluded, however, that such a proposal will require further study.

The arguments presented by certain employer representatives that any increase in the salary tests would be inflationary have been carefully considered. The proposal to increase the salary levels recognizes that inflation has already taken place, and is merely an attempt to make the salary tests meaningful in light of present economic conditions. The Bureau of Labor Statistics' publication Employment and Earnings published in October 1969, shows that the average wages of nonsupervisory employees in nonagricultural occupations has increased from an average of $88.40 per week in the year 1963 (the year of the last increase in the salary tests) to $117.80 per week in the month of September 1969, or an increase of 30.9 percent. Very significant evidence that the current salary tests are no longer meaningful is the finding that in one out of every five establishments the lowest paid exempt executives for whom data were collected during the May 1–October 31, 1968, period actually earned less than the highest paid nonexempt worker whom he supervised, and that one out of every three executives earning less than $125 per week received less than a worker whom he supervised. This indicates that the salary test at its present level is not performing its intended function. Since the enactment of the Act, the salary paid to an employee assertedly employed in a bona fide executive, administrative, or professional capacity has been recognized by the hearing officers considering amendments to the regulations as one of the most meaningful criteria for determining the bona fides of the employment of the employee in such a capacity. See the Reports and Recommendations of the Presiding Officer, October 1940, pp. 19 et seq.; June 1949, pp. 24 et seq.; March 1958, 28 F.R. 7003 et seq. As pointed out in the 1940 Report, employment in such a capacity implies a certain prestige, status, and importance, and employees who qualify under the definitions are denied the protection of the Act and must accordingly be assumed to enjoy compensatory privileges—an assumption which must clearly fail unless there is an adequate differentiation between the salary normally earned by a nonexempt worker for a standard workweek and that paid the employee for whom exemption is claimed on the ground that he is performing bona fide executive, administrative, or professional functions.

The 1969 earnings data report further indicates that only 5 percent of the lowest paid executive employees determined to be exempt had weekly salaries as low as $100. The same report shows that only 3 percent of the lowest paid administrative employees who were determined to be exempt had weekly salaries as low as $100, and that 5 percent of such professional employees had weekly salaries below $120 per week. In light of such statistics, it is evident that a failure to increase the salary tests would render them meaningless with respect to all but a relatively few of the employees to whom these regulations apply. As stated in the 1958 Report, the primary objective of the salary test is the drawing of a line separating bona fide executive, administrative, and professional employees from such employees as working foremen and production workers, technicians, clerical workers, and subprofessional employees. If the salary tests are to serve this purpose in a situation where salaries and wages have risen, it is inevitable, as the hearing officer stated in this report, that some employees who have been classified as exempt under the existing salary tests will no longer be within the exemption under any new tests adopted. As then pointed out, the higher salary test should eliminate from the exemption such employees as those whose status in management or the professions is questionable in view of their low salaries, as well as employees whose exempt status, on the basis of their duties and responsibilities, is questionable. The salary test must be set at a level high enough to do this if it is to be effective generally in reflecting the bona fide status of employees as executive, administrative, and professional personnel.

Most union representatives pointed out in their arguments in favor of even higher salary tests than those proposed, that the Wage and Hour and Public Contracts Divisions' earnings data report upon which the proposed salary tests are based contains data only for a portion of calendar year 1968 and earlier, and that such data have not been adjusted to reflect wage increases which are acknowledged to have occurred within the past year. I recognize the validity of their testimony in that respect. However, a salary increase of the magnitude which they have proposed would in my judgment cause the loss of the exemption to a substantial number of employees who were intended by Congress to be exempted.

Finding: After analyzing all available data, views, argument, and testimony received on this matter, I have partially amended my original proposals published in the FEDERAL REGISTER on June 27, 1969, by lowering the minimum salary tests and by creating a separate category with different salary tests for those affected employees brought within coverage of the Fair Labor Standards Act for the first time by the 1966 amendments.

Except as stated below, the minimum salary tests in the United States will be

increased, effective 30 days after publication of this document in the FEDERAL REGISTER, as follows: $125 per week for executive and administrative employees; $140 per week for professional employees; and $200 per week in the case of the special proviso for higher paid employees. I recognize that an "upset" salary test of $200 per week will reflect a slightly higher percentage differential than now exists between the basic and upset salary figures. The higher salary proviso is not, however, a basic exemption requirement but is merely an alternative under which less emphasis is given to the employees duties and responsibilities. Therefore, in order that such a higher figure continue to be meaningful I feel that it should more nearly reflect current salary levels.

I also feel that there is evidence to support the contention of several employer representatives that any increase in the salary tests should consider the special problem of establishments which employ those executive, administrative, and professional employees brought within the coverage of the Fair Labor Standards Act for the first time by the 1966 amendments. Therefore, beginning 30 days after publication of this document in the FEDERAL REGISTER the minimum salary level for an executive or administrative employee who was brought within the purview of the Fair Labor Standards Act by the 1966 amendments will be increased to $115 per week, and beginning February 1, 1971, to $125 per week, and the minimum salary level for a professional employee brought within the purview of the Fair Labor Standards Act by the 1966 amendments will be increased to $130 per week beginning 30 days after such publication, and to $140 per week beginning February 1, 1971. A similar two step increase for such "newly covered" employees will also be included under the special proviso for higher paid employees in all three categories. This "upset" salary test will be increased to $175 per week beginning 30 days after publication of this document in the FEDERAL REGISTER, and to $200 per week beginning February 1, 1971.

Puerto Rico, Virgin Islands, and American Samoa:

Subsequent to publication of the proposal in the FEDERAL REGISTER on June 27, 1969, the Commonwealth of Puerto Rico issued its Regulation Number 13, pursuant to section 33(b) of the Minimum Wage Act of Puerto Rico, setting minimum salary levels for administrative, executive, and professional employees. This Regulation became effective on August 4, 1969.

Since the basic salary levels in that Regulation either equal or exceed those contained in my original proposal, I have decided that the experience of the Puerto Rican government should be relied on. Therefore, effective 30 days after publication of this document in the FEDERAL REGISTER, the following minimum salary levels will be adopted as set forth in Puerto Rican Regulation Number 13: Executive employees, $115 per week; administrative employees, $100 per week; and professional employees, $125 per week. I am also adopting the Puerto Rican special high salary or "upset" provision of $150 per week for all three categories of employees. It should be noted that the Commonwealth regulation makes no provision for preferential treatment of enterprises or employees brought within the purview of the Fair Labor Standards Act by the 1966 amendments. Therefore, the 2-step increase previously stipulated for such enterprises or employees will not apply in Puerto Rico.

I further conclude that the past practice of adopting the Puerto Rican salary levels for the Virgin Islands and American Samoa shall be continued. Accordingly, after consideration of all matter presented, and pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 213(a)(1)), Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and Secretary's Order 17–68 (33 F.R. 15776) and Order 2–69 (34 F.R. 1203), I hereby amend 29 CFR Part 541 as follows:

1. In § 541.1, paragraph (f) is revised to read as follows:

§ 541.1 Executive.

* * * * *

(f) Who (except as otherwise provided in § 541.5b) is compensated for his services on a salary basis at a rate of not less than $125 per week (or $115 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Prvided,* That an employee who (except as otherwise provided in § 541.5b) is compensated on a salary basis at a rate of not less than $200 per week (or $150 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

2. In § 541.2, paragraph (e) is revised to read as follows:

§ 541.2 Administrative.

* * * * *

(e)(1) Who (except as otherwise provided in § 541.5b) is compensated for his services on a salary or fee basis at a rate of not less than $125 per week (or $100 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, or

(2) Who, in the case of academic administrative personnel, is compensated for his services as required by subparagraph (1) of this paragraph, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which he is employed:

Provided, That an employee who (except as otherwise provided in § 541.5b) is compensated on a salary or fee basis at a rate of not less than $200 per week (or $150 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

3. In § 541.3, paragraph (e) is revised to read as follows:

§ 541.3 Professional.

* * * * *

(e) Who (except as otherwise provided in § 541.5b) is compensated for his services on a salary or fee basis at a rate of not less than $140 per week (or $125 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided,* That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: and *Provided further,* That an employee who (except as otherwise provided in § 541.5b) is compensated on a salary or fee basis at a rate of not less than $200 per week (or $150 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1) or (3) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

4. A new § 541.5b is added to read as follows:

§ 541.5b Salary tests for executive, administrative, and professional employees brought within the Act by the 1966 Amendments.

The salary tests in §§ 541.1(f), 541.2 (e)(1), and 541.3(e) for executive, administrative, and professional employees employed in any place within coverage of the Act, other than Puerto Rico, the Virgin Islands, and American Samoa, shall not apply to such employees who are brought within the purview of the Act by the Fair Labor Standards Amendments of 1966, until February 1, 1971. For the period up to February 1, 1971, the salary tests for the purpose of those sections, shall be not less than $115 per week for such executive and administrative employees, and not less than $130 per week

for such professional employees. For all such employees the salary tests for the purpose of the provisos in §§ 541.1(f) and 541.2(e), and of the final proviso in § 541.3(e) shall be not less than $175 per week.

5. Section 541.100 is revoked.

§ 541.100 [Revoked]

6. In § 541.117, paragraphs (a) and (b) are revised to read as follows:

§ 541.117 Amount of salary required.

(a) Except as otherwise noted in paragraph (b) of this section, compensation on a salary basis at a rate of not less than $125 per week, exclusive of board, lodging, or other facilities, is required for exemption as an executive. The $125 a week may be translated into equivalent amounts for periods longer than 1 week. The requirement will be met if the employee is compensated biweekly on a salary basis of $250, semimonthly on a salary basis of $270.83 or monthly on a salary basis of $541.66. In the case of an employee who is brought within the purview of the Act by the Fair Labor Standards Amendments of 1966, the salary rate until February 1, 1971, is $115 per week. This requirement will be met if the employee is compensated on a salary basis of $230 biweekly, $249.17 semimonthly, or $498.33 monthly. However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an "executive" is $115 per week.

* * * * *

7. In § 541.118, paragraph (b) is revised to read as follows:

§ 541.118 Salary basis.

* * * * *

(b) *Minimum guarantee plus extras.* It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of $125 or more per week ($115 per week, until Feb. 1, 1971, if brought within the purview of the Act by the Fair Labor Standards Amendments of 1966) and, in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of his branch, if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that he will receive not less than the amount specified in the regulations in any week in which he performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis". For example, a salary of $175 a week may not arbitrarily be divided into a guaranteed minimum of $125 paid in each week in which any work is performed, and an additional $50 which is made subject to deductions which are not permitted under paragraph (a) of this section.

* * * * *

8. Section 541.119 is revised to read as follows:

§ 541.119 Special proviso for high salaried executives.

(a) Except as otherwise noted in paragraph (b) of this section, § 541.1 contains a special proviso for managerial employees who are compensated on a salary basis at a rate of not less than $200 per week (or $175 per week, until Feb. 1, 1971, in the case of an employee brought within the purview of the Act by the Fair Labor Standards Amendments of 1966) exclusive of board, lodging, or other facilities. Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of § 541.1 if his primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof and includes the customary and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under paragraphs (a) through (f) of § 541.1.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the proviso of § 541.1(f) applies to those managerial employees who are compensated on a salary basis at a rate of not less than $150 per week.

(c) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

9. Section 541.200 is revoked.

§ 541.200 [Revoked]

10. In § 541.211, paragraphs (a), (b), and (d) are revised to read as follows:

§ 541.211 Amount of salary or fees required.

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than $125 a week, exclusive of board, lodging, or other facilities, is required for exemption as an "administrative" employee. The requirement will be met if the employee is compensated biweekly on a salary basis of $250, semimonthly on a salary basis of $270.83, or monthly on a salary basis of $541.66. In the case of an employee who is brought within the purview of the Act by the Fair Labor Standards Amendments of 1966, the salary rate, until February 1, 1971, is $115 per week. This requirement will be met if the employee is compensated on a salary basis of $230 biweekly, $249.17 semimonthly, or $498.33 monthly.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an "administrative" employee is $100 per week.

* * * * *

(d) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in Subpart A of this part do not prohibit the sale of such facilities to administrative employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

11. Section 541.214 is revised to read as follows:

§ 541.214 Special proviso for high salaried administrative employees.

(a) Except as otherwise noted in paragraph (b) of this section, § 541.2 contains a special proviso including within the definition of "administrative" an employee who is compensated on a salary or fee basis at a rate of not less than $200 per week (or $175 per week, until Feb. 1, 1971, in the case of an employee who is brought within the purview of the Act by the Fair Labor Standards Amendments of 1966) exclusive of board, lodging, or other facilities, and whose primary duty consists of either the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, or the performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein, where the performance of such primary duty includes work requiring the exercise of discretion and independent judgment. Such a highly paid employee engaged in such work as his primary duty is deemed to meet all the requirements in § 541.2 (a) through (e). If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under § 541.2 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the proviso of § 541.2(e) applies to those "administrative" employees who are compensated on a salary or fee basis of not less than $150 per week.

12. Section 541.300 is revoked.

13. In § 541.311, paragraphs (a) and (b) are revised to read as follows:

§ 541.311 Amount of salary or fees required.

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than $140 per week, exclusive of board, lodging, or other facilities, is required for exemption as a "professional" employee. An employee will meet the requirement if he is paid a biweekly salary of $280, a semimonthly

salary of $303.33, or a monthly salary of $606.67. In the case of an employee who is brought within the purview of the Act by the Fair Labor Standards Amendments of 1966, the salary rate, until February 1, 1971, is $130 per week. This requirement will be met if the employee is compensated on a salary basis of $260 biweekly, $281.67 semimonthly, or $563.33 monthly.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as a "professional" employee is $125 per week.

* * * * *

14. In § 541.313, paragraphs (c) and (d) are revised to read as follows:

§ 541.313 Fee basis.

* * * * *

(c) The adequacy of a fee payment—whether it amounts to payment at a rate of not less than $140 per week to a professsional employee or at a rate of not less than $125 per week to an administrative employee—(except as otherwise provided in § 541.5b)—can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate specified in the regulations in Subpart A of this part the amount paid to the employee will be tested by reference to a standard workweek of 40 hours. Thus compliance will be tested in each case of a fee payment by determining whether the payment is at a rate which would amount to at least $140 per week to a professional employee or at a rate of not less than $125 per week to an administrative employee if 40 hours were worked.

(d) The following examples will illustrate the principle stated above:

(1) A singer receives $50 for a song on a 15-minute program (no rehearsal time is involved). Obviously the requirement will be met since the employee would earn $140 at this rate of pay in far less than 40 hours.

(2) An artist is paid $75 for a picture. Upon completion of the assignment, it is determined that the artist worked 20 hours. Since earnings at this rate would yield the artist $150 if 40 hours were worked, the requirement is met.

(3) An illustrator is assigned the illustration of a pamphlet at a fee of $150. When the job is completed, it is determined that the employee worked 60 hours. If he worked 40 hours at this rate, the employee would have earned only $100. The fee payment of $150 for work which required 60 hours to complete therefore does not meet the requirement of payment at a rate of $140 per week and the employee must be considered nonexempt. It follows that if in the performance of this assignment the illustrator worked in excess of 40 hours in any week, overtime rates must be paid. Whether or not he worked in excess of 40 hours in any week, records for such an employee would have to be kept in accordance with the regulations covering records for nonexempt employees (Part 516 of this chapter).

15. Section 541.315 is revised to read as follows:

§ 541.315 Special proviso for high salaried professional employees.

(a) Except as otherwise noted in paragraph (b) of this section, the definition of "professional" contains a special proviso for employees who are compensated on a salary or fee basis at a rate of at least $200 per week (or $175 per week, until Feb. 1, 1971, in the case of an employee brought within the purview of the Act by the Fair Labor Standards Amendments of 1966) exclusive of board, lodging, or other facilities. Under this proviso, the requirements for exemption in § 541.3 (a) through (e) will be deemed to be met by an employee who receives the higher salary or fees and whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning, or work as a teacher in the activity of imparting knowledge, which includes work requiring the consistent exercise of discretion and judgment, or consists of the performance of work requiring invention, imagination, or talent in a recognized field of artistic endeavor. Thus, the exemption will apply to highly paid employees employed either in one of the "learned" professions or in an "artistic" profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under § 541.3 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the second proviso of § 541.3(e) applies to those "professional" employees who are compensated on a salary or fee basis of not less than $150 per week.

16. In § 541.600, paragraph (a) is revised to read as follows:

§ 541.600 Combination exemptions.

(a) The Divisions' position under the regulations in Subpart A of this part permits the "tacking" of exempt work under one section of the regulations in Subpart A to exempt work under another section of those regulations, so that a person who, for example, performs a combination of executive and professional work may qualify for exemption. In combination exemptions, however, the employee must meet the stricter of the requirements on salary and nonexempt work. For instance, if the employee performs a combination of an executive's and an outside salesman's function (regardless of which occupies most of his time) he must meet the salary requirement for executives. Also, the total hours of nonexempt work under the definition of "executive" together with the hours of work which would not be exempt if he were clearly an outside salesman, must not exceed either 20 percent of the hours worked in the workweek by the nonexempt employees of the employer, whichever is the smaller amount.

* * * * *

(Sec. 13, 52 Stat. 1067, as amended; 29 U.S.C. 213)

Effective date. These amendments shall be effective 30 days following the date of this publication in the FEDERAL REGISTER.

Signed at Washington, D.C., this 16th day of January, 1970.

ROBERT D. MARON,
Administrator.

[F.R. Doc. 70-795; Filed, Jan. 21, 1970; 8:45 a.m.]

Chapter XIII—Bureau of Labor Standards, Department of Labor

PART 1516—SAFETY AND HEALTH STANDARDS FOR FEDERAL SERVICE CONTRACTS

Updating of References; Clarifying Changes

Pursuant to section 4(a) of the Service Contract Act of 1965 (41 U.S.C. 353 (a)) Part 1516 of Title 29, Code of Federal Regulations, is hereby amended in order to reflect changes in the addresses of some of the regional offices of the Bureau of Labor Standards and to indicate that the name of the "United States of America Standards Institute" is changed to the "American National Standards Institute, Incorporated." In addition, some clarification is made concerning the application of the Department of Labor's standards issued under other safety and health legislation to working conditions and surroundings whereunder contracts for services covered by the Service Contract Act of 1965 are performed.

No notice and public procedure is provided because the changes relate to public contracts and thus are within the exemptions provided in 5 U.S.C. 553(a)(2), and further, such notice and public procedure is considered unnecessary because the changes are minor involving only clerical corrections or clarifying changes. The changes do not alter obligations arising under the Service Contract Act of 1965. The changes shall be effective immediately. No delay in effective date is provided because no substantive changes are involved.

Part 1516 is amended as indicated below.

1. Section 1516.2 is hereby amended to read as follows:

§ 1516.2 Safety and health standards.

(a) Every contractor and subcontractor shall protect the safety and health of service employees by complying with the applicable standards, specifications, and codes developed and published by the U.S. Department of Labor or any other agency of the United States and nationally recognized professional organizations. Information as to the latest standards, specifications, and codes applicable to a particular contract or invitation for bids is available at the office of the Director of the Bureau of Labor Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, D.C. 20212, or at any of the regional offices of the Bureau of Labor Standards as follows: